1981

No. 80-5303

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANTONIA BELTRAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioner,

v.

BEVERLEE A. MYERS, INDIVIDUALLY AND AS DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH; AND ELISABETH LYMAN, INDIVIDUALLY AND AS DEPUTY DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

GILL DEFORD
NEAL S. DUDOVITZ
National Senior Citizens Law Center
1636 West 8th Street, Suite 201
Los Angeles, California 90017
(213) 388-1381

Attorneys for Petitioner

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

I. CALIFORNIA'S INTERPRETATION OF 42 U.S.C. §1396a(a) (10) (C) (i) IS INTERNALLY CONTRADICTORY AND LEGALLY UNSUPPORTABLE 2

II. CALIFORNIA CAN PROVIDE NO RATIONALE FOR SUBSTITUTING THE DETERMINATION OF THE FEDERAL AGENCY WITH ITS OWN 7

III. 42 U.S.C. §1396a (a) (17) (B) REQUIRES CONSIDERATION OF ONLY AVAILABLE RESOURCES, AND MAKES NO EXCEPTION FOR RESOURCES PREVIOUSLY OWNED 12

IV. CONGRESS AND HHS HAVE RECOGNIZED THAT COMMON SENSE REQUIRES IDENTICAL TREATMENT OF THE MEDICALLY AND CATEGORICALLY NEEDY 16

CONCLUSION 21

TABLE OF AUTHORITIES

Cases *Page*

Aitchison v. Berger,
404 F.Supp. 1137 (S.D.N.Y. 1975), aff'd without opinion 538 F.2d 307 (2d Cir.), cert. denied 429 U.S. 890 (1976) 10

Blue Chip Stamps v. Manor Drug Stores,
421 U.S. 723 (1976) 8

Brown v. Stanton,
617 F.2d 1224 (7th Cir. 1980), pet. for cert. pending
No. 79-1690 (filed April 25, 1980) 14

Buckner v. Maher,
424 F.Supp. 366 (D.Conn. 1976), aff'd 434 U.S.
898 (1977) 14

Caldwell v. Blum,
621 F.2d 491 (2d Cir. 1980), pet. for cert. pending
No. 79-2034 (filed June 24, 1980) 7

Dawson v. Myers,
622 F.2d 1304 (9th Cir. 1980) 5,8,9,16,19

Fabula v. Buck,
598 F.2d 869 (4th Cir. 1979) 7,10,17,19

Lerner v. Division of Family Services,
235 N.W.2d 478, 70 Wis.2d 670 (1975) 15

Michael Reese Physicians and Surgeons, S.C. v. Quern,
606 F.2d 732 (7th Cir. 1979), cert. denied, ____ U.S. ____,
49 U.S.L.W. 3493 (1981) 11

New York State Department of Social Services v. Dublino,
413 U.S. 405 (1973) 20

Owens v. Roberts,
377 F.Supp. 45 (M.D.Fla. 1974) 14

Robinson v. Pratt,
497 F.Supp. 116 (D.Mass. 1980), appeal pending
No. 80-1750 (1st Cir.) 17

Rosado v. Wyman,
397 U.S. 397 (1970) 10

Smith v. Vowell,
379 F.Supp. 139 (W.D.Tex.), aff'd without opinion
504 F.2d 759 (5th Cir. 1974) 10

Udall v. Tallman,
380 U.S. 1 (1965) 7

United States v. Larionoff,
431 U.S. 864 (1977) 11

United States Railroad Retirement Board v. Fritz,
____ U.S. ____, 101 S.Ct. 453 (1980) 13

Lan Lare v. Hurley,
421 U.S. 338 (1975) 14

Wheeler v. Barrera,
417 U.S. 402 (1974) 6

Winter v. Trainor,
CCH Medicare & Medicaid Guide, ¶ 28,151
(N.D.Ill. 1977) 10

Woodard v. St. Clair,
CCH Medicare & Medicaid Guide ¶ 30,804
(S.D.Miss. 1980) 14

Statutes

42 U.S.C. §1382b (a) (1) 19
42 U.S.C. §1396a (a) (10) (C) 2,3
42 U.S.C. §1396a (a) (10) (C) (i) 2,3,4
42 U.S.C. §1396a (a) (17) 4
42 U.S.C. §1396a (a) (17) (B) 12,13
42 U.S.C. §1396a (a) (18) 19
42 U.S.C. §1396c 9

Pub.L. No. 96-611, §5, 94 Stat. 3567 (1980) 13,15

Cal. Welf. & Inst. C. §14051 3

Regulations

42 C.F.R. §435.4 3
42 C.F.R. §435.401 (c) 8,12
42 C.F.R. §435.840 (a) 12
42 C.F.R. §435.841 (a) 12
42 C.F.R. §435.845 (b) 16
42 C.F.R. §448.4 (c) (4) 16

45 C.F.R. §201.6 (c) 9

22 Cal. Admin. C. §50411 (a) 15
22 Cal. Admin. C. §50425 (a) (4) 18

Miscellaneous

42 Fed.Reg. 2685 (1977) 12
43 Fed.Reg. 45176 (1978) 16
126 Cong.Rec. S16505 (daily ed., Dec. 13, 1980) 18
Handbook of Public Assistance Administration, Supp. D, § D-4230 (4) 14
S.Rep. No. 404, 89th Cong., 1st Sess. (1965), reprinted in [1965] U.S. Code Cong. & Admin. News, 1943 3,14
SSI Claims Manual, § 12596 (a) 12
SSI Claims Manual, § 12507 (b) 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-5303

ANTONIA BELTRAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioner,

v.

BEVERLEE A. MYERS, INDIVIDUALLY AND AS DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH; AND ELISABETH LYMAN, INDIVIDUALLY AND AS DEPUTY DIRECTOR, CALIFORNIA STATE DEPARTMENT OF HEALTH,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

I.

CALIFORNIA'S INTERPRETATION OF 42 U.S.C. §1396a (a) (10) (C) (i) IS INTERNALLY CONTRADICTORY AND LEGALLY UNSUPPORTABLE

The issue of this case is whether California can apply a transfer of assets rule to medically needy applicants when it is forbidden to apply, and does not apply, a transfer rule to the identically situated aged, blind, and disabled categorically needy. Plaintiff contends that the "comparability" requirements of the Medicaid statute forbid this different treatment.

Defendants dispute this analysis, but their arguments demonstrate a serious inconsistency as to whether the statute requires comparability between the categorically and medically needy. Their Summary of Argument states: "[42 U.S.C. §1396a (a) (10) (C)] specifically excludes income and resource criteria from its *requirement that the medically needy and categorically needy be treated alike.*" Brief of Respondents, at 8 (emphasis supplied). One paragraph later, they state that that section's "purpose was not to require 'comparable' treatment between the categorically needy and medically needy." *Id.*, at 8. Their entire analysis is flawed by this inconsistent reading of the statute.

This discrepancy undercuts their conclusory observation as to the "plain meaning of this statute". *Id.*, at 15. The phrase "except for income and resources" does not set limits on financial eligibility conditions for the medically needy; rather, it *defines* the medically needy. They are those individuals who *would* be eligible for cash assistance (i.e., SSI or AFDC) except for the fact that their gross incomes and resources are over the cash assistance levels. Indeed,

defendants themselves recognize that this section provides the definition of the medically needy: "primarily those individuals who would qualify for Title IV-A [AFDC] or Title XVI [SSI] financial assistance except that they have sufficient income and resources to cover their needs, apart from medical expenses." *Id.*, at 2. See also 42 C.F.R. §435.4; Cal. Welf. & Inst. C. §14051 (federal and state definitions of "medically needy").

California can only support its reading of the statute by stating that "[i]f the same financial eligibility conditions were employed for the two groups, there would be no difference between them." *Id.*, at 16. That contention is misleading and incorrect. 42 U.S.C. §1396a(a)(10)(C)(i) establishes the difference: the medically needy have more gross income or resources. That is the only difference, as the medically needy are required to meet the categorical requirements. There is nothing in this first clause of 42 U.S.C. §1396a (a) (10) (C) (i) which indicates that different eligibility conditions — whether of a financial or other nature — must be applied to them. Indeed, if it did, the states would not be limited only to applying transfer rules to the medically needy; they could also apply other more restrictive eligibility conditions, such as lower income levels. This would lead to the inconsistent result of the medically needy having their income after medical expenses reduced to a level below that of the categorically needy, a result which directly counters the very premise of the medically needy program. See, *e.g.*, S.Rep.No. 404, 89th Cong., 1st Sess. (1965), reprinted in [1965] U.S. Code Cong. & Admin. News, 1943, 2019 (cited in Brief for Petitioner, at 18; see also *id.*, at 26-27).

Having determined, however, that the first part of 42 U.S.C. §1396a (a) (10) (C) (i) provides a financial eligibility exception to the general rule of comparability

between the categorically and medically needy, the state then inconsistently urges that the second part of the provision does not require any comparability between those two groups.[1] Plaintiff does not dispute the state's claim that the "comparability" provision in the second clause requires equal treatment between different groups of the medically needy. The legislative history supports that interpretation. See Brief of Respondents, at 17. But the legislative history of this section, and of the comparability provision in 42 U.S.C. § 1396a (a) (17), indicates that there must be comparability between the medically needy and the categorically needy, as well as between the various categories of the medically needy. See Brief for Petitioner, at 18-20. Defendants can offer no explanation as to why their limiting interpretation of this part of the provision is required by the statute or its legislative history. In light of the numerous cases to the contrary, see Brief of Petitioner, at 26 n.19, the consistent analysis of HHS on this point, *id.*, at 20-25, and the strong rationales favoring consistency of treatment between the categorically and medically needy, see *id.*, at 31-34, no basis

[1]These inconsistent positions cannot be treated as "alternative" analyses. California premises its argument as to the meaning of the "except for income and resources" clause on the assumption that there is a requirement of comparability between the categorically and medically needy. Without that assumption, there is no place for that clause in their analysis, for they are asserting that the "except for" language creates an exception to the general comparability requirement. If there is no general comparability requirement between the categorically and medically needy, as the state contends is the meaning of the second part of the provision, then there is no need for the "except for" clause in the first part. The state cannot have it both ways.

exists for this limitation of the meaning of the comparability requrements.[2]

Finally, defendants contend that if there is a comparability requirement for the categorically and medically needy, then California satisfies it. Citing the Ninth Circuit's holding on this point, 622 F.2d, at 1311 (J.A. 65), the state notes the many financial conditions of eligibility in California which are the same for the categorically and medically needy, and thereby concludes that the rules of the two are comparable — if not identical. Brief of Respondents, at 18.

This analysis is irrational. It results in an entire class of individuals being treated in exactly the opposite manner from individuals identically situated. Even if comparability does not require identical treatment, it cannot permit diametrically opposite treatment of categorically and medically needy individuals who have committed exactly the same act. To contend that "comparability" permits opposite treatment of two groups with identical needs is to turn that word on its head. See *infra,* at 5-6 n.3.

---

[2]Even the Ninth Circuit did not conclude that there was no requirement of comparability between the categorically and medically needy. See 622 F.2d, at 1310-1311 (J.A. 64). The appellate court agreed with defendants that the "except for" clause in the provision did not require that the same financial conditions of eligibility be employed, *id.*, at 1310 (J.A. 64), but, unlike defendants, it did not draw the internally inconsistent conclusion that the second part of the provision does not require any comparability between the categorically and medically needy. See *id.*, at 1311 (J.A. 64-65). Instead, that court carved out an exception to the common interpretation of 42 U.S.C. §1396a (a) (10) (C) (i), concluding that comparability only required similarity, *id.*, at 1311 (J.A. 65). Thus, the general requirement of comparability between the medically and categorically needy was not disputed by the Ninth Circuit. No appellate court, therefore, and only one district court, which was overruled (*Fabula*), has ever concluded that the comparability provisions of the Medicaid statute were not applicable to the categorically and medically needy. *(continued)*

Moreover, the fact that other eligibility conditions for the two groups are the same does not excuse a condition which is decidedly different for one group than the other. Each eligibility standard must be looked at separately. Otherwise, states could establish extremely stringent rules in one area — such as the resource eligibility standard — and use that to exclude large numbers of the medically needy. That cannot have been Congress' intent.[3]

(footnote continued from proceeding page)

Moreover, New York and Maryland also do not contend that there is no requirement of comparability between the categorically and medically needy. Instead, they assert the Ninth Circuit's analysis, that comparability does not require identical standards. See Brief Amici Curiae, at 3, 5-6. California therefore stands alone in contending that 42 U.S.C. § §1396a (a) (10) (C) (i) and 1396a (a) (17) do not require comparability between the categorically and medically needy.

---

[3]In their brief, New York and Maryland cite a decision of this Court for the broad proposition that comparable does not mean identical. Brief Amici Curiae, at 6. That case, *Wheeler v. Barrera,* 417 U.S. 402 (1974), is not dispositive in this situation. In *wheeler,* the word "comparable" did not appear in the statute at issue. *Id.*, at 415 n.11. That requirement was a creation of HEW, representing its effort to implement the congressional intent that children in nonpublic schools receive assistance similar to that provided in public schools. The statute sought to provide services comparable in quality and scope; children with similar, not identical, needs were to receive similar, not identical, services. *Id.*, at 421 n.15. This broad approach, however, still mandated that if one service could not be provided, "the solution is to employ an acceptable alternative form." *Id.*, at 419-420. A comparability requirement could not be satisfied by only partial provision of services: "A program which provides instruction and equipment to the public school children and the same equipment but no instruction to the private school children cannot, on its face, be comparable." *Id.*, at 424-425. In this case, eligibility, not services, is at issue. Eligibility either exists or does not; there is no middle ground. *wheeler* underscores that the existence of some similar rules for the medically and categorically needy does not meet a comparability requirement. See *supra,* at 5.

(continued)

In a vacuum, "comparability" may encompass standards which are not identical; it does not, however, allow a state to treat two groups with identical needs in a diametrically opposite fashion. If comparability could be interpreted that broadly, it would be a meaningless requirement. HHS has defined comparability in the context of this issue, and that definition has been regularly validated.

II.

CALIFORNIA CAN PROVIDE NO RATIONALE FOR SUBSTITUTING THE DETERMINATION OF THE FEDERAL AGENCY WITH ITS OWN

Defendants are essentially arguing that their interpretation of the federal statute is better than that of HHS. States are not permitted, however, to replace the analysis of the responsible agency with a policy which they prefer. This determination by HHS is a reasonable one in light of the statute and its history, the consideration of numerous courts, and the practical reasons why the medically and categorically needy should be treated no differently. See *infra*, at 15-18. The reasonability of this interpretation precludes a reviewing court from substituting its own preference. *Udall v. Tallman,* 380 U.S. 1, 4 (1965); *Caldwell v. Blum,* 621 F.2d 491, 497 (2d Cir. 1980), pet. for cert. pending No. 79-2034 (filed June 24, 1980); *Fabula v. Buck,* 598 F.2d 869, 873 (4th Cir. 1979).

(footnote continued from proceeding page)

Excusing transfers for one group, while using them to deny eligibility to another with identical needs, is no more comparable than the provision of services to one group with none to the other. In this instance, the responsible agency has determined that the statutory term "comparable" can only be met by identical treatment. Nothing in *Wheeler* suggests that that decision is improper in this context.

Defendants attempt to circumvent this well-established standard for review of agency determinations in a curious manner. First, they contend that "in the absence of judicial review, this court should not defer to HHS' interpretation. . . ." Brief of Respondents, at 20. Secondly, they argue that HHS has been inconsistent on this issue. *Id.*, at 21. Thirdly, they assert that the applicable regulation, 42 C.F.R. §435.401 (c), does not mean what HHS says that it means. *Id.*, at 26-29.[4]

First, there has been judicial review on this issue, both on the general question of comparability and on the specific question of transfer rules. As plaintiff has noted, comparability between the medically and categorically needy has been accepted by every court which has issued a final decision. HHS is not alone in its interpretation, and this is a significant factor in evaluating the propriety of that interpretation. *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 733 (1976); *Caldwell,* 621 F.2d, at 497. Indeed, there has been considerably more judicial evaluation of this issue than of most. Furthermore, on the specific issue of transfer rules in light of the comparability provisions, the Ninth

---

[4]Like the Ninth Circuit, the state treats plaintiff's contentions regarding the regulation as a separate argument. See Brief of Respondents, at 26-29; 622 F.2d, at 1313-1314 (J.A. 69-70). Plaintiff has always contended that the regulation and its predecessors effectuate HHS; interpretation that there is comparability between the categorically and medically needy. The statute, the regulation, and the explicit HHS pronouncements on this issue must be read as an integrated whole.

Circuit stands alone among federal and state appellate courts in its determination.[5]

Secondly, California appears to contend that the announced HHS policy is unconvincing because it is inconsistent. Yet defendants do not point to a different HHS interpretation from previous years to support this purported inconsistency. There is none: HHS has repeatedly held that the comparability requirements in "SSI" states forbid them from employing transfer rules. Instead, the state argues that HHS' approval of California's state plan and "its failure to take any action against the plan" evidences this inconsistency. *Id.*, at 21.

The latter contention is simply inaccurate. HHS has moved against the state through its usual method of initiating informal compliance hearings; this began with the letter of September 28, 1978 from the Regional Director setting out explicitly why the transfer rule was invalid. This approach is standard HHS operating procedure. See Brief for Petitioner, at 24 n.18. The attempt to resolve the problem by informal discussion, 45 C.F.R. §201.6 (c), is the common method of correcting improper state rules without resorting to the drastic remedy of terminating federal payments. See 42 U.S.C. §1396c.

Use of this procedure does not imply that the federal agency concurs with the state rule. If that interpretation of the Ninth Circuit were upheld, see 622 F.2d, at 1311 (J.A. 66), then HHS would be compelled to hold formal com-

[5]Defendants attempt to denigrate HHS' position by terming it a "letter interpretation". Brief of Respondents, at 20. But they ignore the numerous other expressions of HHS' analysis, and also the significance of that interpretation. The HHS Regional offices are following the announced and publicized policy of HHS. See Brief for Petitioner, at 22-23. They are not acting independently, nor have they invented their own position on this issue.

pliance hearings in every instance of an alleged non-compliance. The result would be a significant expenditure of resources to hold the hearings, and the regular termination of matching funds to states. The present procedure effectuates the goal of the statute without forcing either party into an extreme position at the outset.

Nor has HHS otherwise approved of the transfer rule, implicitly or explicitly. It does not even appear in the state plan filed with HHS.[6] Even if there were a reference to the rule in the plan, HHS' approval of the plan as a whole does not represent acceptance of every specific aspect of the plan — especially when the agency explicitly informs the state of its non-compliance on that point. *Fabula v. Buck, supra,* 398 F.2d, at 873 n.11; *Aitchison v. Berger,* 404 F.Supp. 1137, 1148 (S.D.N.Y. 1975), aff'd without opinion 538 F.2d 307 (2d Cir.), *cert. denied* 429 U.S. 890 (1976); *Winter v. Trainor,* CCH Medicare & Medicaid Guide, ¶28,151, at 10,999 (N.D.Ill. 1977); *Smith v. Vowell,* 379 F.Supp. 139, 161 (W.D.Tex.), aff'd without opinion 504 F.2d 759 (5th Cir. 1974). As the Fourth Circuit observed in reflecting on the minimal relevance of HHS approval of a state plan to the propriety of a specific eligibility rule: "[Its] slight persuasiveness becomes even more ethereal in the face of the agency's clear statements to the contrary." *Fabula,* 598 F.2d, at 873 n.11. The logical endpoint of California's analysis would be that a claimant could never effectively challenge a state rule, for, by definition, all rules would have been implicitly accepted by HHS as proper. *Accord Rosado v. Wyman,* 397 U.S. 397, 405, 406 & n.8 (1970).

[6] "The approved [California] State Medicaid plan does not contain any reference to the 'transfer of assets' prohibition which the State has imposed upon the 'medically needy.' " Amicus Brief of HHS, at 11, lodged with Ninth Circuit, in Support of Petitioner's Request for Rehearing *En Banc.*

In short, HHS' position on transfer rules has been consistent, both in California and throughout the country.[7] The state attempts, though, to further discredit reliance on HHS' analysis of the transfer rule in an unprecedented manner. It claims that the regulation does not mean what HHS states that it means. While the deference due a federal agency in interpreting a statute is considerable, an even greater deference exists when the agency is interpreting its own regulation. *United States v. Larionoff,* 431 U.S. 864, 872 (1977).

The essence of their argument is that the location of 42 C.F.R. §435.401 (c) in the regulations precludes it from applying to financial conditions of eligibility. Brief of Respondents, at 26-28. But HHS and its predecessor have always agreed that the regulations, in various wordings, codifications, and locations, correctly implemented the comparability requirement by precluding all more restrictive treatment of the medically needy. The parties agree that no substantive changes were made in the regulations during the recodification in 1978. Brief for Petitioner, at 21 n.15; Brief of Respondents, at 28. HHS and HEW have always

---

[7]Defendants' reliance on *Michael Reese Physiucians and Surgeons, S.C. v. Quern,* 606 F.2d 732 (7th Cir. 1979), *cert. denied,* ____ U.S. ____ , 49 U.S.L.W. 3493 (1981), is unfounded. In that case, which involved Medicaid fraud and abuse, the court specifically noted that HHS had "declin[ed] thus far to take any action against the modification in the plan. . . ." 606 F.2d, at 735. Here, by contrast, there was no change in the plan, or even an explicit statement of the transfer rule. And, as has been noted, HHS *has* taken action.

interpreted their own regulations to require the same treatment.[8]

HHS has promulgated numerous regulations through the years which require comparability between the medically and categorically needy, culminating in 42 C.F.R. §435.401 (c). The agency has itself stated in various private and public communications that the two groups must have the same eligibility conditions, financial and otherwise.[9] There exists no basis for the Ninth Circuit's conclusion that HHS actually meant other than what it has explicitly and repeatedly stated.

III.

42 U.S.C. §1396a (a) (17) (B) REQUIRES CONSIDERATION OF ONLY AVAILABLE RESOURCES, AND MAKES NO EXCEPTION FOR RESOURCES PREVIOUSLY OWNED

This case is concerned only with resources which have been validly transferred, not with those still legally in the

[8]See 42 C.F.R. §§435.840 (a), 435.841 (a), both of which require "SSI" states to use the more liberal of the SSI or AFDC rules for their resource standards. Even if 42 C.F.R. §435.401 (c) were not applicable, these requirements could stand alone to preclude states from applying more restrictive resource rules, including transfer of assets provisions. But section 435.401 (c) is explicit and controlling, stating specifically that states "must not use requirements for determining eligibility for optional coverage groups that are — . . . (2) For aged, blind, and disabled individuals, more restrictive than those under SSI . . . ."

[9]*E.g.*: "[A]ll aged, blind and disabled persons . . . must have their eligibility determined using all SSI eligibility rules except for — and only except for — higher dollar amounts for income and resources eligibility." 42 Fed.Reg. 2685 (1977).

possession of the purported transferor. The importance of this distinction is reflected by the careful language in the SSI Claims Manual, §12507 (a), which proscribes different treatment for resources actually transferred from those which are not validly transferred. See App. D to Petition for Certiorari, at 37. Thus, by definition, the class members who see eligibility no longer have any legal right to the property which the state is attributing to them. The Medicaid statute, however, permits states only to consider income and resources which are "available" to the applicant. 42 U.S.C. §1396a (a) (17) (B).

Defendants counter that this provision of the statute also permits inclusion of resources which were *previously* in the possession of the claimant. There is no basis in the Medicaid statute now in effect for this claim.[10] While the cases cited by California, at 22-25, support this reliance on past ownership, they are premised on unsubstantiated assumptions as to what Congress intended with the "availability" requirement, rather than on what Congress actually wrote. There is no suggestion in the statute or its legislative history that Congress intended available resources to include property which was no longer in the possession of the applicant — regardless of the circumstances in which it was disposed of. As this Court recently stated: "The language of the statute is clear, and we have historically assumed that Congress intended what it enacted." *U.S. Railroad Retirement Board v. Fritz*, — U.S. —, 101 S.Ct. 453, 461 (1980).

The legislative history of the section underscores that "availability" must be strictly construed: "States [are] to take into account only such income and resources as . . . are

---

[10]Compare Pub.L. 96-611, §5, 94 Stat. 3567 (1980), discussed *infra*, at 14.

actually available to the applicant or recipient. . . ." S.Rep. No. 404, 89th Cong., 1st Sess., 78, reprinted in [1965] U.S. Code Cong. & Admin. News, 1943, 2018 (emphasis supplied). Obviously, if the claimant has legally divested herself of the property, it is no longer actually available.[11]

This Court has agreed with this interpretation in the identical context. In summarily affirming a district court decision invalidating Connecticut's transfer of assets rule for Medicaid and AFDC applicants, the Court implicitly accepted this analysis: "[B]y denying eligibility for assistance over a period of time during which a transferred asset would otherwise sustain the applicant, were it still available, the rule assumes the availability of unavailable resources, in clear contradiction of the case law doctrine." *Buckner v. Maher,* 424 F.Supp. 366, 373 (D.Conn. 1976), aff'd mem. 434 U.S. 898 (1977); see also *Woodard v. St. Clair,* CCH Medicare & Medicaid Guide, ¶ 30,804, at 9478 (S.D.Miss. 1980); *Owens v. Roberts,* 377 F.Supp. 45 55 (M.D.Fla. 1974).[12]

---

[11]HEW guidelines threw further light on the issue: "Available income and resources are income and resources which are 'in hand' or under the control of the individual, preferably looking to a period not in excess of three months ahead. . . ." Handbook of Public Assistance Administration, Supplement D, §D-4230 (4), (R., Tab 13, p. 70).

[12]In a long line of cases, this Court and others have utilized a strict interpretation for the Medicaid availability requirement and for the similar one in the AFDC statute. See, *e.g., Van Lare v. Hurley,* 421 U.S. 338 (1975); *Brown v. Stanton,* 617 F.2d 1224 (7th Cir. 1980), pet. for cert. pending No. 79-1690 (filed April 25, 1980). Defendants attempt to distinguish these cases as involving a separate issue, Brief of Respondents, at 23 n.12, but all stand for the proposition that availability is to be strictly construed. In those cases, it meant that income could not be presumed available from relatives; in this case, it means that resources cannot be presumed available which are no longer in the possession of the applicant.

Under the California rule, the state is in fact treating a divested asset as one that is available. The state does this by calculating the period of ineligibility based on the uncompensated value of the transferred asset. 22 Cal. Admin.C. §50411(a). But there is no present basis in the federal statute for this assumption of availability. By contrast, the new federal transfer rule specifically sets out an exception to the general rule of availability in the SSI and Medicaid programs for the purpose of determining the period of ineligibility. See Pub.L. 96-611, §5(a), (b), 94 Stat. 3567, 3568 (1980).

Defendants have thus made an impassioned argument that Congress could not have intended the availability requirement not to include assets recently transferred. They base this analysis on the policy which they prefer, not on the statute itself. Similarly, the Wisconsin Supreme Court could find no basis for its decision upholding that state's transfer rule beyond an unsubstantiated belief that a prohibition against transfer rules "could not have been contemplated by [Congress] when it enacted Title XIX, nor by HEW when it promulgated regulations thereunder." *Lerner v. Division of Family Services,* 235 N.W.2d 478, 484, 70 Wis.2d 670 (1975). But until Congress did specifically carve out an exception to the requirement of present and actual availability in Pub.L. No. 96-611, there were and are no grounds for this conclusion. While the Wisconsin Supreme Court

and the Ninth Circuit may prefer that states count resources no longer in the possession of the claimant, there is no statutory authority for that action.[13]

IV.

CONGRESS AND HHS HAVE RECOGNIZED THAT COMMON SENSE REQUIRES IDENTICAL TREATMENT OF THE MEDICALLY AND CATEGORICALLY NEEDY

California, Maryland, and New York argue throughout ther briefs that logic supports the differential treatment of the medically and categorically needy. The only distinction between the two groups, however, is the greater gross income of the medically needy. Congress had determined that that difference is of no significance since members of both groups are unable to afford medical care. It is for that reason that the same rules should be applicable to individuals in both groups.

---

[13]Reliance on the rules permitting states to count income and assets to be obtained up to six months in the future, see 622 F.2d, at 1313 (J.A. 68); Brief of Respondents, at 25-26, is entirely misplaced. Those provisions are for administrative convenience, so that states need not make an eligibility determination every month. And those regulations derive directly — and with no substantive changes, see 43 Fed.Reg. 45176 (1978) — from regulations which specified that the state plan must "provide that only such income and resources will be considered as will be 'in hand' within" the future period. 42 C.F.R. §448.4 (c) (4) (1977). The "in hand" requirement significantly differentiates that rule from the suggestion that a resource which, by definition, is not "in hand" can still be counted. Moreover, another regulation, to which defendants allude, but do not discuss, Brief of Respondents at 25, specifies that a state "must — . . . consider *only* resources available during the period for which income is computed under §435.831 (a)." 42 C.F.R. §435.845 (b) (emphasis supplied). The regulations thus specifically preclude a state from considering past resources available.

Were it otherwise, the same people would have different rules applied to them for the same act depending on whether they were considered medically or categorically needy. Brief for Petitioner, at 32-33 & n.24. And, similarly, the spouse who was not responsible for an uncompensated transfer would have eligibility denied because he is medically needy, while the spouse who actually transferred remains untouchable because she is categorically needy. See *Robinson v. Pratt,* 497 F.Supp. 116, 117-118. (D.Mass. 1980), appeal pending No. 80-1750 (1st Cir.). It is to avoid these illogical and unjust results for people who are in the same economic position that Congress determined that the same rules be applied to them. And the courts have repeatedly recognized this logic. See *e.g., Fabula v. Buck, supra,* 598 F.2d, at 874.

The states respond in part, however, that it is logical to apply a different rule to SSI recipients than to the medically needy, as the amount at stake in SSI benefits is sufficiently small that, they contend, a prohibition against transfers would serve no purpose. Brief of Respondents, 38-39; Brief of Amici, at 6-7. This contention is both irrelevant and wrong. First, it is solely a policy argument; the federal statute and the regulations simply do not permit this differential treatment. In any event, it is factually inaccurate. The states ignore that Medicaid eligibility flows directly from SSI eligibility; consequently, the same benefits are at stake for both cash assistance recipients and those with incomes over those levels: Medicaid. Congress and HHS have thus rationally concluded that with the same benefits at issue, states should not be permitted to treat one group in a different manner than the other.

Indeed, Congress has reiterated this approach in its recent transfer legislation. As California notes, at 43, the new

federal law establishes a basis for denying eligibility to *both* the categorically needy (for SSI benefits and for Medicaid) and to the medically needy. While thus changing its policy regarding transfer rules, Congress has not changed its overall approach that the medically needy should not be treated differently than the categorically needy. Senator Long noted that individuals were transferring in order to obtain eligibility under both programs, so that a rule prohibiting this policy was necessary in each. 126 Cong.Rec. S.16505 (daily ed., Dec. 13, 1980).[14]

Defendants repeatedly assert that California's transfer rule is necessary to prevent fraudulent practices and to save finite resources for those "truly" in need. They admit, though, that the new transfer rule severely undercuts their claims of overwhelming expenses. Brief of Respondents, at 7 n.7. But they ignore a significant contradiction to their claim that the transfer rule prevents fraud. California's rule is applicable to *all* transferred resources, regardless of whether those resources are exempted in determining Medicaid eligibility. The plaintiff's residence, for instance, was exempt at the time of the transfer, and remains so, since Mr. Beltran still lives there. 22 Cal.Admin.C. §50425 (a) (4); SSI Claims Manual § 12570 (b). Thus, had it not been given to the children, it would not have been counted as a resource, and its value could not have been counted in determining Antonia Beltran's eligibility. It is difficult to imagine how the transfer of an exempt resource could be intended to obtain

[14]Sen. Long also repeated the Congressional recognition that a federal transfer rule was needed because "the present law is so written" as to permit applicants to transfer. 126 Cong.Rec. S.16505.

Medicaid eligibility — since its retention could not affect eligibility.[15]

The state is thus on weak ground when it offers the equitable argument that transfer rules like California's are a necessity to prevent wholesale fraudulent actions. Many, perhaps most, applicants against whom the transfer rule is applied are elderly individuals who give away exempt residences, often to their children. Transferring an exempt resource should not be considered a fraudulent act, yet California does not discriminate between exempt and non-exempt resources in the application of its rule. The new federal legislation, however, specifically recognizes the illogic of this practice. It excludes exempt resources from those which can be considered available when the transfer prohibition is applied: "In determining the resources of an individual . . . there shall be included (*but subject to the exclusions under subsection (a)*) [of section 1613 of the Social Security Act] . . . ." Subsection 1613 (c) (1) of the Social Security Act, as added by Pub.L. No. 96-611, § 5(a), *supra* (emphasis supplied). Subsection 1613 (a) of the Act, 42 U.S.C. § 1382b (a), sets out the resources excluded from consideration in determining SSI eligibility. Among them, of course, is the applicant's home. 42 U.S.C. § 1382b (a) (1).

---

[15]The state cannot claim that divestment of an exempt asset is still a permissible reason to deny eligibility on the grounds that the transfer precludes the state from recovering some of the cost of medical care after the death of the recipient. See 42 U.S.C. § 1396a (a) (18); *Fabula v. Buck,* 598 F.2d, at 871. Despite the Ninth Circuit's contention, 622 F.2d, at 1308 (J.A. 60), California has no state statute permitting such a recovery. Brief of Respondents, at 4 n.4. Thus, a transfer could not be intended to avoid state action after the applicant's death because the state cannot take that action.

The state's arguments essentially reduce to a contention that its procedures are proper because it seeks to weed out those who do not truly need assistance; to support this argument, defendants are forced to contend that HHS not only misinterpreted the Medicaid statute, but its own regulations as well. California is unable, however, to present any legal reason why its preference, rooted in its evaluation of policy concerns, should prevail over that of the responsible agency. There is, at the least, strong support in the statute, its legislative history, and the agency's consistent efforts, for the HHS conclusion that states may not apply transfer rules to the medically needy. This interpretation is "reasonable and consistent with the statute, and [is] entitled to be followed by the courts." *Fabula,* 598 F.2d, at 873 (footnote and citation omitted); see also *Caldwell,* 621 F.2d, at 497. The Ninth Circuit's effort to avoid this necessary result supplants logical and reasonable interpretations with an unsupportable analysis of the statute and HHS' own regulations. At best, it is a less logical and supportable interpretation than that of HHS; moreover, it contravenes the numerous other courts which have analyzed the issue.

This Court has often stated that " 'the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong. . . .' " *New York State Dept. of Social Services v. Dublino,* 413 U.S. 405, 421 (1973), quoting *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367, 381 (1969). With this substantial presumption favoring the determination of the responsible agency, there is simply no basis for the Ninth Circuit's determination. California's transfer of assets rule is impermissible under federal law.

CONCLUSION

The decision of the Court of Appeals should be reversed.

DATED: March, 1981.

GILL DEFORD
NEAL S. DUDOVITZ
Attorneys for Petitioner